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ORIGINAL

May 9, 2003
BY HAND DELIVERY

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

OUR FILE NO. 3002197-1
RECEIVED

MAY - 9 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Ex Parte, CC Docket No. 99-273, Provision of Directory Listing Information Under the
Telecommunications Act of 1934, As Amended**

Dear Ms. Dortch:

This notice is being filed pursuant to Section 1.1206(b)(1) of the Commission's rules. On Thursday, May 8, 2003, the undersigned, Patrick O'Connor of Gray Cary Ware & Freidenrich LLP, communicated via email with Darryl Cooper of the Wireline Competition Bureau regarding the above-referenced docket. Specifically, the correspondence related to state protection of subscriber privacy. The text of the email correspondence is attached, please consider this part of the official record. Please call me at 202.238.7722 if you have any questions or concerns.

Best regards,

Gray Cary Ware & Freidenrich LLP



Patrick J. O'Connor
poconnor@graycary.com

Admitted to practice in Virginia and the District of Columbia

PJO:LLL
Attachment

cc: Darryl Cooper
Greg Cooke
Rodney McDonald
Marcy Greene

No. of Copies rec'd 0
List A B C D E

O'Connor, Patrick

From: O'Connor, Patrick
Sent: Thursday, May 08, 2003 3:40 PM
To: 'dcooper@fcc.gov'
Cc: Kunin, Christy; Bob Harris (E-mail); Pete Renner (E-mail); Ed Tierney (E-mail)
Subject: Protection of subscriber privacy

Dear Darryl,

We appreciate the opportunity to speak with you earlier this week regarding protection of subscriber privacy. As you know, LSSI has always taken the view that, just as we have the same rights as the ILECs to access and use DA information, we are also bound by the same obligations to safeguard that information, as prescribed by state and federal law. As a result, LSSI has spent significant time and money to ensure compliance with these statutory and regulatory obligations. We have been and will continue to be absolutely rigorous in protection of subscriber information, particularly nonpublished and nonlisted data.

As we also discussed, in addition to federal efforts to curb telemarketing under the TCPA and at the FTC, many states have provided mechanisms for consumers to opt out of telemarketing overtures. In that regard, as promised, the following states have implemented (or are poised to implement) state do-not-call lists: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Missouri, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Wisconsin and Wyoming have state do-not-call lists. Legislation to implement do-not-call lists had been offered, as of July 2002, in Alaska, Arizona, Iowa, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Oklahoma, Rhode Island, South Dakota and Washington.

In addition, the following is a partial (and somewhat dated) list of states and their relevant statutes that explicitly protect nonpublished listing information:

California: Consumer information subject to privacy protection. Cal. Pub. Util. Code § 2891. California Public Utilities Commission, Rulemaking 95-04-043, Decision at 10 (issued Oct. 5, 2000)

Colorado: Protection of nonpublished listings. 4 Colo. Code Regs. § 723-2-12.3.1 and 4 Colo. Code Regs. § 723-2-2.1.1; Prohibitions on use of information for marketing purposes. 4 Colo. Code Regs. § 723-2-27.8.1

Connecticut: Protection of nonpublished listings. Conn. Gen. Stat. § 16-247s; "No sales solicitation calls" listings. Conn. Gen. Stat. §§ 42-288 a (e)(1), (e)(2) and (b)

Illinois: Protection of nonpublished listings. Ill. Admin. Code tit. 83, § 735.180 (a)(1), (h)

Maryland: Protection of nonpublished listings. Md. Reg. Code tit. 20, § 45.04.11(H)

Nebraska: Consumer information subject to privacy protection. Tit. 291 Nebraska Admin. Code Ch. 5 § 002-18B

New York: Protection of nonpublished listings. N.Y. Pub. Serv. Law § 602.8(a)(1); Consumer information subject to privacy protection by carriers and non-carriers. Cases 94-C-0095, et al, Local Competition Proceeding, Order Regarding Directory Database Issues at 17-18 ("NY DA Order") (issued July 22, 1998); Cases 94-C-0095, et al., Order Resolving Petitions for Rehearing and Clarification July 22, 1996 Order Regarding Directory Database Issues and Directing the Refiling of Tariffs ("NY DA Order II") (issued January 7, 1999); Statement of Policy on Privacy in Telecommunications, Case 90-C-0075 (March 22, 1991); New York State Public Service Commission, Modification and Clarification of Policy on Privacy in Telecommunications, Case 90-C-0075 (September 20, 1991) at 3-4.

Ohio: Protection of nonpublished listings. Ohio Admin. Code § 4901:1-5-10 (B) and Ohio Admin. Code § 4901:1-5-10.

Pennsylvania: Protection of nonpublished listings. 35 Pa. Stat. Ann. § 7019(b); Order, Pennsylvania Public Utility Commission v. Citizens Telecommunications Company of New York, Inc. d/b/a Citizens Communications Services Company, Docket Number R-00994971 (February 11, 2000).

Texas: Protection of nonpublished listings. Tex. Util. Code Ann. §§ 26.128(d)(1), 26.272(e)(1)(D)(vii)

Vermont: Consumer information subject to privacy protection. <http://www.state.vt.us/psd/tele.htm>+

We would be happy to provide you with additional information or to assist in drafting language. Please do not hesitate to contact either me or Christy with any further questions.

Best regards,

Patrick

Patrick J. O'Connor

Attorney at Law

Licensed to Practice in Virginia and Washington, DC

GRAYCARY. TECHNOLOGY'S LEGAL EDGE

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